SUPREME COURT OF THE UNITED STATES.

No. 289.

LEONARD T. SMITH, PLAINTIFF IN ERROR,

vs.

CLINTON COCKRILL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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1 UNITED STATES OF AMERICA, *ss:*

To Clinton Cockrill, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden in Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein Leonard T. Smith is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done the parties in that behalf.

Witness the honorable Samuel F. Miller, one of the justices of the said Supreme Court, this the 11th day of September, 1866.

MARK W. DELAHAY,
One of the Judges of the Circuit Court for the District of Kansas.

Attest: A. S. THOMAS,
Clerk of said Court.

2 STATE OF KANSAS, *Leavenworth County, sct:*

George W. Fackler, of lawful age, being duly sworn, says: That on the 11th day of September, 1866, at the county aforesaid, he served the within citation on L. B. Wheat, esq., the attorney of record for the within mentioned Clinton Cockrill, by delivering to him personally a true copy thereof.

G. W. FACKLER.

Subscribed in my presence and sworn before me, Sept. 12th, 1866.

A. F. CALLAHAN,
United States Commissioner, appointed by the Circuit Court of the United States in and for the District of Kansas.

Filed Sept. 3, 1866.

A. S. THOMAS, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the ninth circuit, and for the district of Kansas, greeting:

Because in the record and proceedings, and also in the rendering of judgment in an action before you, or some of you, between Clinton Cockrill, plaintiff, and Leonard T. Smith, defendant, a manifest error has intervened to the great damage, as in his complaint appears; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in his behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the writ aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice of the Supreme Court

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You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden in Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein Leonard T. Smith is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done the parties in that behalf.

Witness the honorable Samuel F. Miller, one of the justices of the said Supreme Court, this the 11th day of September, 1866.

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Filed Sept. 3, 1866.

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3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the ninth circuit, and for the district of Kansas, greeting:

Because in the record and proceedings, and also in the rendering of judgment in an action before you, or some of you, between Clinton Cockrill, plaintiff, and Leonard T. Smith, defendant, a manifest error has intervened to the great damage, as in his complaint appears; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in his behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the writ aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice of the Supreme Court

of the United States on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Salmon P. Chase, esquire, Chief Justice of said Supreme Court, at Washington aforesaid, this seventh day of September, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninety-first.

[SEAL.]

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the Dist. of Kansas.

Filed Sept. 1, 1866.

A. S. THOMAS, *Clerk.*

Circuit court of the United States for the District of Kansas.

Know all men by these presents, that we, Leonard T. Smith and James C. Stone, of the county of Leavenworth and State of Kansas, are held and firmly bound to Clinton Cockrill, of the State of Missouri, in the sum of five hundred dollars, to be paid to said Clinton Cockrill, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our hands, and dated this 7th day of September, A. D. 1866.

Whereas the above-named Leonard T. Smith hath prosecuted a writ of error in the Supreme Court of the United States to reverse a judgment rendered in said circuit court in an action then pending, in which said Leonard T. Smith was defendant, and said Clinton Cockrill was plaintiff: Now, therefore, the condition of this obligation is such that if the above-named Leonard T. Smith shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

L. T. SMITH. [SEAL.]
J. L. STONE. [SEAL.]

I approve this bond.

SAM. F. MILLER,
Judge Kansas Circuit Court.

Filed Sept. 7, 1866.

A. S. THOMAS, *Clerk.*

Be it remembered, that heretofore, to wit, on the 12th day of October, in the year of our Lord one thousand eight hundred and sixty-three, (A. D. 1863,) came Clinton Cockrill, by his attorneys, Rees & Wheat, and filed in the office of the clerk of the

circuit court of the United States of America in and for the district of Kansas, his petition and præcipe, in words and figures following, that is to say:

Petition.

In the circuit court of the United States for the district of Kansas.

CLINTON COCKRILL, pl'ff,
v.
LEONARD T. SMITH, def't. } Petition.

UNITED STATES OF AMERICA, *District of Kansas, ss:*

The said Clinton Cockrill, the plaintiff in this suit, who is a citizen of and resident in the State of Missouri, complains of the said Leonard T. Smith, the defendant herein, who is a citizen of and a resident in the State of Kansas; for that the said plaintiff has a real
9 estate in and is entitled to the possession of the following described tracts of land situate, lying, and being in said district of Kansas, and in the county of Leavenworth and State of Kansas, namely: Lot number fifteen (15) in block number six, (6;) lots numbers fifteen (15) and sixteen (16) in block number seven, (7;) lots number fifteen (15) and sixteen (16) in block number nine, (9;) lot number five (5) in block number twelve, (12;) lots numbers fourteen (14) fifteen (15) and sixteen (16) in block number seventeen, (17;) lot number seven (7) in block number twenty (20;) and lots number twelve (12) and thirteen (13) in block number twenty-four, (24)—all in Clark & Rees's addition to the city of Leavenworth.

And the said plaintiff further avers that the said defendant unlawfully keeps him out of the possession of the above-described tracts of land, to his damage the sum of twenty-four hundred dollars.
10 And the said plaintiff further avers that the said above-described tracts of land are of great value, and of the value of twenty-four hundred dollars.

Wherefore the said plaintiff prays and demands judgment against the said defendant for the recovery of the said above-described tracts of land, and for the delivery of the possession thereof to him; and for an execution for the delivery of the possession thereof to him, and for the sum of twenty-four hundred dollars damages, and for costs of suit, &c.

REES & WHEAT,
Attorneys for Plaintiff.

Præcipe.

The clerk of the above-named court will please issue a summons to the defendant in the above-entitled suit, directed to the marshal of the above-named district to serve, returnable in ten days after the issuing thereof.

The plaintiff claims judgment for the recovery of several tracts of land described in the petition, &c., and for the sum of $2,400
11 damages and for costs of suit, &c.

REES & WHEAT,
Att'ys for Pl'ff.

Which said petition and præcipe is and was indorsed in words and figures following, that is to say:

Indorsed: Circuit court United States, district of Kansas, plea gen'l No. 59. Clinton Cockrill *vs.* Leonard T. Smith. Petition and præcipe. Filed October 12th, A. D. 1863. John T. Morton, clerk.

And now the said petition and præcipe being so as aforesaid filed, thereupon was issued by the clerk of said court a writ of summons, in due form of law, in words and figures following, that is to say:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
District of Kansas, ss:

The President of the United States of America to the marshal of the United States for the district of Kansas, greeting:

12 You are hereby commanded to notify Leonard T. Smith that he has been sued by Clinton Cockrill in the circuit court of the United States for the district of Kansas, and that unless he answer by the eleventh day of November, A. D. 1863, the petition of the said Clinton Cockrill, against him filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly; you will make due return of this writ on the 22d day of Oct., A. D. 1863.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this twelfth (12th) day of October, in the year of our Lord one thousand eight hundred and sixty-three, (A. D. 1863,) and of our independence the 88th.

[L. S.] JOHN T. MORTON, *Clerk.*

Int. revenue stamp, 5 cts cancelled.

Which said writ of summons was and is indorsed in words
13 and figures following, that is to say:

Indorsed: No. 59. Circuit court of the United States, district of Kansas. Clinton Cockrill *vs.* Leonard T. Smith. Summons. Issued October 12th, A. D. 1863. Returnable October 22d, A. D. 1863. Rees & Wheat, att'ys for plaintiff. Action brought for the recovery of real property and money. The plaintiff demands judgment for the recovery of real property, and $2,400 damages and costs of suit.

REES & WHEAT,
Att'ys for Pl'ff.

And which said writ of summons was by the marshal therein named duly returned into said clerk's office on the 22d day of October, A. D. 1863, with the indorsement of his return of his doings thereon written upon it, in words and figures following, that is to say:

Return.

Received this writ October 12th, A. D. 1863. Executed the same on the same day, by leaving a copy with Leonard T. Smith. Serving one, $2; miles, 60, $3 60—total, $5 60.

JAMES L. McDOWELL, *U. S. Marshal,*

14 Per W. P. MILLER, *Deputy.*

Return.

Whereupon said writ of summons was duly further indorsed by by said clerk with filing in words and figures following, that is to say:

Filed October 12th, A. D. 1863.

JOHN T. MORTON, *Clerk.*

And be it further remembered, that afterwards, to wit, on the 10th day of November, A. D. 1863, the said defendant, Leonard T. Smith, by his attorneys, Stinson and Havens, came and filed in said clerk's office his answer in words and figures following, that is to say:

Answer.

In the circuit court of the United States for said district.

CLINTON COCKRILL, pl'ff, *vs.* LEONARD T. SMITH, def't. } Answer.

UNITED STATES OF AMERICA, *District of Kansas:*

15 Now comes the said defendant, and for answer to the plaintiff's petition, admits he is in possession of said property described in plaintiff's petition, but denies each and every other material allegation therein contained.

LEONARD T. SMITH, *Def't.*
By STINSON & HAVENS, *his Attorneys.*

Which said answer was and is indorsed in words and figures as follows, to wit:

Indorsed: U. S. circuit ct. dist. of Kansas, No. 59. Clinton Cockrill *vs.* Leonard T. Smith. Answer. Stinson and Havens, defendant's att'y.

And further indorsed with an agreement by and between the parties to said suit in words and figures following, that is to say:

Agreem't indorsed on answer.

Leave is given defendant to file this answer within five days from date. Leav., Nov. 11th, 1863.

REES & WHEAT, *Att'ys for Pl'ff.*

16 And which said answer and agreement being so filed, was thereupon duly indorsed further by the clerk of said court with such filing in words and figures as follows, to wit:

Filed.

Filed Nov. 16th, A. D. 1863.

JOHN T. MORTON, *Cl'k.*

And be it remembered further, that heretofore, to wit, on the 23d day of November, A. D. 1863, the circuit court of the United States of America in and for the district of Kansas, convened in Topeka, in said district, in court, in course pursuant to law in such case made and provided.

Convening.

MONDAY, *November* 23*d*, 1863.

At a term of the circuit court of the United States, in and for the district of Kansas, begun and held in Topeka, in said district, on Monday the 23d day of November, A. D. 1863, and of our independence the eighty-eighth.

Present: Hon. Mark W. Delahay, Robert Crozier, U.S. att'y,
17 John F. Morton, clerk, James L. McDowell, marshal, Joshua Knowles, crier.

And be it remembered further, that at and during said term of said court, and on the 6th judicial day thereof, it being the 28th day of November, A. D. 1863, proceedings were done and had in the above-entitled cause by said court in words and figures following, that is to say:

Entry.

SATURDAY, *Nov.* 28, *A. D.* 1863.

Court met pursuant to adjournment and opened by proclamation. Present: same as on the 23d instant.

CLINTON COCKRILL *vs.* LEONARD T. SMITH. } 59. Civil action.

Now comes as well the said plaintiff, by Rees and Wheat, his att'ys, as the said defendant, by his att'ys, Stinson and Havens.

And this cause is submitted to the court for trial, both
18 parties waiving the intervention of a jury. And the court, after hearing the testimony, doth find for the plaintiff that he is entitled to the possession of the real estate in the petition herein described, and doth assess his damages for the unlawful withholding of the same by the said defendant at the sum of one dollar, $1.)

It is, therefore, considered and adjudged by the court, that the said plaintiff have and recover as against the said defendant the possession of the said real estate, to wit:

Lot number (15) fifteen in block number six, (6.)

Lots number fifteen (15) and sixteen (16) in block number seven, (7.)

Lots number fifteen (15) and sixteen (16) in block number nine, (9.)

Lot number five (5) in block number twelve, (12.)

Lots number fourteen, (14,) fifteen, (15,) and sixteen, (16,) in block number seventeen, (17.)

Lot number seven (7) in block number twenty, (20,) and lots number twelve (12) and thirteen (13) in block number twenty-four, (24.) All in Clark and Rees' addition to the city of Leavenworth, in the county of Leavenworth, and State of Kansas.

19 And that he have his writ of execution for the delivery of the possession thereof. And is further considered that the said plaintiff have and recover of the said defendant, the sum of one dollar damages, assessed as aforesaid, as also his costs in this behalf expended.

And thereupon the said defendant, by his attorneys, comes and demands another trial herein, it is therefore ordered by the court, that the judgment above rendered in this cause be, and the same is hereby, vacated, and that this cause stand for trial for the next term of this court.

And be it further remembered, that afterwards, to wit, on the 23d day of May, A. D. 1864, the said court convened in court in course, in Topeka, in said district, of which the record is in words and figures following, that is to say:

Entry.

UNITED STATES OF AMERICA, *District of Kansas, ss:*

20 Pleas before the honorable Samuel F. Miller, one of the judges of the Supreme Court of the United States of America, and assigned by law to the performance of circuit duties in and for the district of Kansas, and before the Hon. Mark W. Delahay, judge of the district court of the said United States in and for the said district, and assigned by law to the duties of associate judge of the circuit court of the United States aforesaid, in and for said district of Kansas, at a term of the said circuit court, begun and held in the city of Topeka, in said district, on Monday, the 23d day of May, in the year of our Lord one thousand eight hundred and sixty-four, (A. D. 1864.)

Present: Hon. Mark W. Delahay, judge; Thomas A. Osborn, marshal; James S. Emery, U. S. atty., F. G. Adams, clerk.

Court opened by proclamation.

21 And afterwards, proceeding were had in said cause by said court in words and figures following, to wit:

Entry.

THURSDAY, *May 26th*, 1864.

Court met pursuant to adjournment, and opened by proclamation.

Present: Hon. Samuel F. Miller, judge; Thomas A. Osborn, marshal; Clark J. Hanks, clerk.

CLINTON COCKRILL
v.
LEONARD T. SMITH. } 59. Civil action.

This day comes as well the said plaintiff, by L. B. Wheat, esq., his att'y, as the said defendant by Stinson & Gambell, his attorneys.

And thereupon, issue being joined to try such issue, comes a jury, to wit: David Anderson, J. F. Bliss, H. Norton, G. W. Dailey, A. D. Graham, A. H. Slayton, Harvey Young, Edward King, J. G. Bunker, John Billings, F. W. Drought, and W. R. Wells, twelve good and lawful men, who were duly tried, elected, and sworn well and truly to try the said issue joined, and a true verdict to render according to the law and the evidence.

22 Whereupon the jury hear the evidence and the arguments of counsel, and are instructed by the court concerning their duties as the said jurors, and are discharged to to-morrow morning at 9 o'clock. Whereupon, it is ordered that court do now adjourn to meet to-morrow morning at 9 o'clock.

And afterwards, further proceedings were done and had in this cause, in words and figures following, that is to say:

FRIDAY, *May 27th*, A. D. 1864.

Court met pursuant to adjournment, and opened by proclamation. Present, same as yesterday.

CLINTON COCKRILL
v.
LEONARD T. SMITH. } 59. Ejectment.

23 To-day again come the parties to this cause, and the jury being called and being present, and hearing the evidence as aforesaid, are now instructed by the court upon motion of said plaintiff, to the giving of which instructions the defendant aforesaid, by his attorneys aforesaid, then and there objected and excepted.

And the said jury return into open court the following verdict, to wit: "We the jury find for the plaintiff.

JOHN B. BILLINGS, *Foreman.*"

It is now therefore considered, ordered, and adjudged, that the said plaintiff have and recover of the said defendant, the possession of the said real estate in the petition herein described, to wit:

Lot number fifteen (15) in block number six, (6;) lots numbers fifteen (15) and sixteen (16) in block seven, (7;) lots numbers fifteen (15) and sixteen (16) in block number nine, (9;) lot number five (5) in block number twelve, (12;) lots number fourteen, (14,) fifteen, (15,) and sixteen, (16,) in block number seventeen, (17;) lot number seven,

24 (7) in block number twenty (20;) and lots number twelve (12) and thirteen (13) in block number twenty-four, (24;) all in Clark & Rees addition to the city of Leavenworth, in the county of Leavenworth and State of Kansas; and that the plaintiff have and recover

further of the said defendant his costs by him in this behalf expended, and may have execution therefor.

And it is further ordered, that the said plaintiff may have his writ of assistance for the recovery of the possession of the above-descibed real estate.

Thereupon comes the defendant aforesaid, by his said attorney, Stinson and Gambell, and files in this cause his bill of exceptions, here now duly signed in open court by the said judge, as taken to the instructions of the court aforesaid to the jury at time the same were given, reduced to writing and signed nunc pro tunc.

Which said bill of exceptions is in words and figures follow-
25 ing, that is to say:

In the circuit court of the United States for the district of Kansas.

CLINTON COCKRILL, plt'ff,
vs.
LEONARD T. SMITH, deft.

Now at this the May term, 1864, this cause came on to be heard before his honor Judge Miller and a jury.

And it was admitted that Jeremiah Clark acquired the title in fee simple absolute to the premises described in plaintiff's petition in 1857, and was in the actual possesion thereof during 1858.

The plaintiff then offered in evidence a deed from said Clark, in words and figures following, that is to say:

Deed.

This indenture, made the 22d day of September, in the year one thousand eight hundred and sixty-three, between Jeremiah
26 Clark, of the county of Leavenworth, and State of Kansas, party of the first part, and Clinton Cockrill, of the county of Platte, and State of Missouri, party of the second part, witnesseth, that the said party of the first part for and in consideration of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators forever released and discharged from the same, by these presents, has granted, bargained, sold, aliened, remised released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described tracts of land, situate, lying, and being in the county of Leavenworth and State of Kansas, namely: lot number fifteen (15) in block number six, (6;) Lot number fifteen
27 (15) in block number seven, (7;) lot number sixteen (16) in block number seven, (7;) lot number fifteen (15) and sixteen (16) in block number nine, (9;) lot number five (5) in block number twelve, (12;) lots numbers (14,) fifteen, (15,) and sixteen, (16,) in block number seventeen, (17) lot number seven (7) in block number twenty, (20;) lots

number twelve (12) and thirteen (13) in block number twenty-four 24;) lot number (3) in block number twenty-six, (26,) and lot number nine (9) in block number twenty-eight, (28.) All in Clark's and Rees' addition to the city of Leavenworth, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

And also all the right, estate, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the above described premises, and every part and parcel thereof, with the appurtenan-
28 ces, to have and to hold all and singular the above-mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written first.

JEREMIAH CLARK. [SEAL.]

U. S. int. rev. stamp, 50 cents, cancelled.

STATE OF KANSAS, *Leavenworth County, ss:*

Be it remembered, that on the 22d day of September, A. D. eighteen hundred and sixty-three, before me, the undersigned, a notary public in and for the county and State aforesaid, came Jeremiah Clark, who is personally known to me to be the identical person whose name is affixed to the foregoing instrument of writing as grantor, and he acknowledged the same to be his own voluntary act and deed for the purposes therein mentioned.

29 In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last written.

W. S. VAN DOREN,
[L. S.] *Notary Public.*

Warranty deed from Jeremiah Clark to Clinton Cockrill.

STATE OF KANSAS, *Leavenworth County, ss:*

This instrument was filed for record on the 22d day of September, A. D. 1863, at 3 o'clock, p. m., and duly recorded in Book Z, of conveyances, at page 380.

W. S. VAN DOREN,
Register of Deeds.

Plaintiff then offered in evidence a sheriff's deed in words and figures following, that is to say:

Deed.

Know all men by these presents, that whereas Clinton Cockrill, at the March term, A. D. 1862, of the district court of the first judicial district of the State of Kansas, sitting within and for the county of Leavenworth in said State, begun and held in the city of Leav-

30 enworth, commencing on the 3d day of March, A. D. 1862, afterwards during said term, and on the 4th day of April, A. D. 1862, he, the said Clinton Cockrill, recovered a judgment in said court against Samuel F. Few, Amos Rees, and Jeremiah Clark, in an action numbered 343 on the docket of said court, wherein Clinton Cockrill was plaintiff, and Samuel F. Few, Amos Rees, and Jeremiah Clark were defendants, for the sum of seven thousand six hundred aad twenty-eight and $\frac{33}{100}$ dollars as debt, and twenty dollars and fifty cents costs in that behalf expended.

And whereas the said Clinton Cockrill afterwards, on the 16th day of June, A. D. 1863, caused to be issued out of the clerk's office of said court an execution on the said judgment of that date, returnable in 60 days from the date thereof, which said execution was directed to the sheriff of said county of Leavenworth, commanding him to make the said sum of seven thousand six hundred and twenty-eight $\frac{33}{100}$ dollars, and said costs so recovered as aforesaid of the 31 goods and chattels of the said Samuel F. Few, Amos Rees, and Jeremiah Clark, and for want of goods and chattels belonging to the said Samuel F. Few, Amos Rees, and Jeremiah Clark, sufficient to satisfy said last mentioned sum of money and costs, of the lands and tenements belonging to the said Samuel F. Few, Amos Rees, and Jeremiah Clark; which execution duly came to the hands of Alexander Repine, sheriff of said county of Leavenworth, on the 16th day of June, A. D. 1863, to be executed; and the said Alexander Repine, sheriff as aforesaid, for want of goods and chattels sufficient to satisfy said judgment and costs belonging to the said Ssmuel F. Few, Amos Rees, and Jeremiah Clark, did, on the 16th day of June, A. D. 1863, by virtue of said execution, levy upon all and singular the property or lots hereinafter described as property of the said Samuel F. Few and Jeremiah Clark, and caused the same to be duly appraised, upon actual view of the same, on the 17th day of June, A. D. 1863, as the law 32 directs; when after having deposited with the clerk of said court a true copy of said appraisement in accordance with law, and after having given public notice of the time and place of sale by advertisement published for more than thirty days prior thereto, in The Leavenworth Weekly Times, a public newspaper, printed and published in said county of Leavenworth, and of general circulation therein, offered separately the hereinafter described property or lots for sale at public auction, at the door of the court-house in said city of Leavenworth, on the 23d day of July, A. D. 1863, at 10 o'clock a. m., and then and there as sheriff, as aforesaid, separately struck off and sold the same to Clinton Cockrill, as follows, viz: The following described tracts of land situate, lying, and being in Clark and Rees' addition to Leavenworth city, in the county of Leavenworth, and State of Kansas, namely: lot number fifteen (15) in block number six, (6,) for the sum of $267 00; lot number fifteen (15) in block number seven, (7,) for the sum of $84 00; lot number sixteen (16) in 33 block number seven, (7,) for $117 00; lot number fifteen (15) in block number nine, (9,) for the sum of $84 00; lot number sixteen (16) in block number nine, (9,) for the sum of $117 00; lot

number five (5) in block number twelve, (12,) for the sum of $300 00; lot number fourteen (14) in block number seventeen, (17,) for the sum of $134 00; lot number fifteen (15) in block number seventeen, (17,) for the sum of $134 00; lot number sixteen (16) in block number seventeen, (17,) for the sum of $134 00; lot number seven (7) in block number twenty, (20,) for the sum of $117 00; lot number twelve (12) in block number twenty-four, (24,) for the sum of $67 00; lot number thirteen (13) in block number twenty-four, (24,) for the sum of $67 00; lot number three (3) in block number twenty-six, (26,) for the sum of $100 00; lot number nine (9) in block number twenty-eight, (28,) for the sum of $84 00; lot number three (3) in block number eight, (8,) for the sum of $84 00; lot number ten (10) in block number
34 eight, (8,) for the sum of $74 00; lot number eleven (11) in block number eight, for the sum of $74 00; lot number three (3) in block number fourteen, (14,) for the sum of $117 00; and lot number five (5) in block number fourteen, (14,) for the sum of $117 00; and the following described tracts of land situate, lying, and being in the said Leavenworth city proper, in said county and State, namely: lot number four (4) in block number nine, (9,) for the sum of $84 00; lot number six (6) in block number sixty, (60,) for $77 00; lot number seven (7) in block number sixty, (60,) for the sum of $77 00; lot number eleven (11) in block number sixty, (60,) for the sum of $67 00; and lot number twelve (12) in block number sixty, (60,) for the sum of $67 00. The said Clinton Cockrill, being the highest bidder for each of said lots or tracts of land, became the purchaser at said sale of the same separately at and for the several prices aforesaid, and the same were then and there separately struck off and sold to him, the said Clinton Cockrill, for not less than two-thirds of the ap-
35 praised value thereof, and at and for the several prices aforesaid by said sheriff, Alexander Repine, which sale, and the proceedings of said sheriff under said execution, was duly returned to said court, and by the said court at its September term, A. D. 1863, afterwards, during said term, and on the 26th day of September, A. D. 1863, examined and confirmed, and the said Alexander Repine, as such sheriff, ordered to make to the said purchaser, the said Clinton Cockrill, a deed for said lots or tracts of land so sold as aforesaid, to the said Clinton Cockrill.

Now, I, Alexander Repine, sheriff of said county of Leavenworth, in consideration of the premises, and by virtue of the powers in me vested by law, do hereby give, grant, and convey unto the said Clinton Cockrill, and to his heirs and assigns, the lots or tracts of land so sold as aforesaid, and bounded and described as follows, to wit: the following described tract of land situate, lying, and being in Clark and Rees' addition to Leavenworth city, in the county of
36 Leavenworth, and State of Kansas, namely: lot number fifteen (15) in block number six, (6;) lots number fifteen (15) and sixteen (16) in block number seven, (7;) lots number fifteen and sixteen (15) and (16) in block number (9,) nine; lot number five (5) in block number twelve, (12;) lots number fourteen, (14,) fifteen, (15,) and sixteen, (16,) in block number seventeen, (17;) lot number seven (7)

in block number twenty, (20;) lots number twelve (12) and thirteen (13) in block number twenty-four, (24;) lot number three (3) in block number twenty-six, (26;) lot number nine (9) in block number twenty-eight, (28;) lots number three, (3,) ten, (10,) eleven, (11,) in block number eight, (8;) lots number three (3) and five (5) in block number fourteen, (14;) and the following described tracts of land situate, lying and being in said Leavenworth city proper, in said county and State, namely: lot number four (4) in block number nine, (9;) lots number six, (6,) seven, (7,) eleven, (11,) and twelve, (12,) in block sixty, (60.)

37 To have and to hold the same to him, the said Clinton Cockrill, and to his heirs and assigns forever.

In testimony whereof I, Alexander Rapine, sheriff as aforesaid, have hereunto set my hand and affixed my seal at office, in the city of Leavenworth, this the 28th day of September, A. D. 1863.

[SEAL.] ALEXANDER REPINE,
Sheriff of Leavenworth County.

Executed and delivered in presence of—
A. W. REPINE.

5 U. S. int. rev. stamps, $1 00 each, duly cancelled.

THE STATE OF KANSAS, *County of Leavenworth, ss:*

On this 1st day of October, A. D. 1863, personally came before me, David J. Brewer, a notary public in and for said county and State, the said Alexander Repine, sheriff of the said county
38 of Leavenworth, to me personally known to be the identical person whose name is affixed to the foregoing instrument of writing as grantor, and he acknowledged the same to be his own voluntary act and deed as such sheriff, for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal, the day and year last herein written.

[L. S.] DAVID J. BREWER,
Notary Public.

Deed from Samuel F. Few and Jeremiah Clark by Alexander Repine sheriff of Leavenworth county, Kansas, to Clinton Cockrill.

OFFICE OF REGISTER OF DEEDS,
County of Leavenworth, State of Kansas, ss:

I, W. S. Van Doren, register of deeds within and for the county aforesaid, do hereby certify that the within and foregoing instrument of writing was received for record this 8th day of October, A. D. 1863, at 5¼ o'clock p. m., and that the same is duly recorded
39 in book "V" for recording conveyances, at page 566, &c.

In testimony whereof I have hereunto set my hand and seal of office, the day and year aforesaid.

[L. S.] W. S. VAN DORER,
Register of Deeds.
By WILLIAM BIRCHEN,
Deputy.

And it was admitted that all the statements of fact contained in the last-named deed were true; and the defendant admitted himself in possession at the time suit was brought.

The defendant then introduced the following deed, to wit:

To all to whom these presents shall come, greeting:

Know ye, that whereas on the 29th day of May, A. D. 1861, in the United States district court for the district of Kansas, in an action therein pending, wherein Edmund A. W. Hunter was pl'ff, and Jeremiah Clark, Samuel F. Few, and Amos Rees were defendants,
40 the said plaintiff, by the consideration of said court, recovered a judgment against the said defendants for the sum of twelve hundred and seventy-seven dollars and sixteen cents damages and his costs, taxed at twenty-six dollars and forty-five cents; upon and under which judgment there issued out of the clerk's office of said court, under the hand of John T. Morton, clerk thereof, and duly attested by the seal of said court, a writ of execution, bearing date on the 13th day of June, A. D. 1861, to me directed, commanding that of the goods and chattels, lands and tenements of the defendant, Jeremiah Clark, and in default thereof in sufficiency, then of the goods and chattels, lands and tenements of the defendants, Amos Rees and Samuel F. Few, I cause to be collected and made the amount of said judgment and costs, with interest thereon from the 29th day of May, A. D. 1861, at ten per cent. per annum; which execution came to my hands on the 13th day of June, A. D. 1861.

41 And whereas also, on the 30th day of May, 1861, in the United States district court for the State of Kansas, in an action therein pending wherein Nancy McA. Morris was pl'ff, and Jeremiah Clark, Amos Rees, Samuel F. Few, and Robert C. Thompson were defendants, the said plaintiff, by the consideration of said court, recovered a judgment against the said defendants for the sum of one thousand two hundred seventy-eight dollars and twenty-five cent. damages, and her costs, taxed at thirty-two dollars and ninety-five cents; on and under which judgment there was issued out of said court, on the 2d day of July, 1861, a writ of execution, under the hand of John T. Morton, clerk of said court, and attested by the seal of said court, being directed to me, commanding that of the goods and chattels, lands and tenements of the defendants, Jeremiah Clark, Amos Rees, Robert C. Thompson, and Samuel F. Few, I cause to be collected and made the amount of said judgment for damages and costs, with interest thereon from the 30th day of May, 1861; which execution came to my hands on the 2d day of July, 1861.

42 And whereas in pursuance of the commands of said executions I did, on the 5th day of July, 1861, for want of goods and chattels of the defendant, Jeremiah Clark, whereof to satisfy the same, levy on the following-described real property of the said defendant, Jeremiah Clark, to wit:

Lots 7 and 8, in block No. twenty, (20;)

Lot 15, in block No. six, (6;)

Lot 5, in block No. twelve, (12;)
Lots 12 and 13, in block No. twenty-four, (24;).
Lots 14, 15, and 16, in block No. seventeen, (17;)
Lots 9 and 10, in block No. twenty-eight, (28;)
Lot 3, in block No. twenty-six, (26;)
Lots 15 and 16, in block No. seven, (7;)
Lots 15 and 16, in block No. nine, (9;)

All lying and being in Clark & Rees's addition to the city of Leavenworth; and on the 7th day of July, 1861, I caused to be published in the Leavenworth Times, a newspaper published in the city of Leavenworth, a notice of the time and place of sale of, and description of, said property, which said notice was published in said paper for thirty days next preceding the 8th day of August, the time fixed in said notice for the time of such sale; and on the
43 said 8th day of August, 1861, at the door of the court house, in the county of Leavenworth, at the hour of ten o'clock a. m., agreeably to said notice, I did offer for sale at public auction the said property, and did sell the same to Leonard T. Smith, he being the highest and best bidder therefor, at and for the sums set opposite the respective descriptions of said property, to wit:

Block twenty, lot seven, (7)	$110
Block twenty, lot eight, (8)	110
Block six, lot fifteen, (15)	30
Block twelve, lot five, (5)	50
Block twenty-four, lot twelve, (12)	79
Block twenty-four, lot thirteen, (13)	79
Block seventeen, lot fourteen, (14)	30
Block seventeen, lot fifteen, (15)	30
Block seventeen, lot sixteen, (16)	30
Block twenty-eight, lot nine, (9)	35
Block twenty-eight, lot ten, (10)	35
Block twenty-six, lot three, (3)	95
Block seven, lot fifteen, (15)	60
Block seven, lot sixteen, (16)	60
Block nine, lot fifteen, (15)	49
Block nine, lot sixteen, (16)	49

44 Now, therefore, I, James L. McDowell, marshal of the United States for the State of Kansas, by virtue of the power vested in me by law, and in consideration of the premises, and of the sum of nine hundred and twenty-one dollars, to me paid by the said Leonard T. Smith, as the purchase-money of said propeoty, do hereby grant, bargain, sell, and convey unto said Leonard T. Smith the property hereinbefore described, to have and to hold the same unto the said Smith and his heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal this, the 26th day of August, 1861.

[SEAL.] JAMES L. McDOWELL,
U. S. Marshal Dist. Kansas.

THE STATE OF KANSAS, *Leavenworth County, ss:*

On this 26th day of August, A. D. 1861, before me, a notary public in and for said county, came James L. McDowell, United States
45 marshal for the district of Kansas, who is personally known to me to be the identical person whose name is affixed to the foregoing deed, and acknowledged that he signed the same as his own voluntary act and deed as marshal aforesaid.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[L. S.] S. S. LUDLUM,
Notary Public.

Marshal's deed.

James L. McDowell to Leonard T. Smith.

OFFICE OF THE REGISTER OF DEEDS,
County of Leavenworth, State of Kansas, ss:

I, W. S. Van Doren, register of deeds in and for the county aforesaid, do hereby certify that the within and foregoing instrument of writing was rec'd by me for record this 17th day of Sept., A. D. 1861, at 12 o'clock m., and that the same is duly recorded
46 in book R, for recording "conveyances" at pages 493, 494, and 495.

In testimony whereof I have hereunto set my hand and seal of office the day and year aforesaid.

[L. S.] W. S. VAN DOREN,
Register of Deeds.
By WM. BIRCHER, *Deputy.*

And it was admitted that all the statements in said deed were true.

The plaintiff then read in evidence the rules of the district court of the United States of America for Kansas, with the date of their adoption, as follows, to wit:

Entry.

At a term of the district court of the United States, in and for the district of Kansas, begun and held in the city of Topeka, in said district, on Monday, the eighth day of April, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth year.

Present: The Hon. Archibald Williams, judge, John T. Morton clerk.

Entry.

47 WEDNESDAY, *April* 10, 1861.

Present: Same as on the 8th inst. Court met pursuant to adjournment and opened by proclamation.

It is ordered by the court that the following rules and regulations be, and they are hereby, adopted in this court, viz:

RULE 1. The seal of this court shall be the arms of the United

States, surrounded with the words, "seal of district court, U. S. district of Kansas," with the date. 1861.

RULE 2. The practice and pleading of this court shall conform, as far as may be, to the law regulating the practice and pleading of the different courts in this State, except in equity and admiralty cases.

RULE 3. When a suit is brought by a non-resident, a security for the costs of suit shall be filed with the clerk, before the emanation of the writ, which shall be substantially in the following form:

District court of the U. S., district of Kansas.

A. B.
vs.
C. D.

I enter myself security for costs in said case and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court. And, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this ——— day of——, 186–.

(Signed) E. F.

And in case the plaintiff shall not pay any and all costs, ordered, adjudged, or decreed, against him within ten days after the same are taxed, it shall be lawful for the clerk to issue a fee bill and execution against the security for such costs, and the officers shall proceed upon said execution as in other cases.

RULE 4. The process issuing from this court shall be in the name of "The United States of America."

RULE 5. Attorneys and counsellors at law, who have been admitted to practice in the supreme or district courts of this State, or of the territory, shall be admitted to practice in this court, on motion, and each person thus admitted shall take an oath to support the Constitution of the United States, and that he will faithfully discharge his duties as an attorney and counsellor, advocate and proctor of this court.

RULE 6. The clerk shall keep a roll for the signature of attorneys, and issue to each a certificate of admission, under the seal of the court.

RULE 7. All motions made, relating to suits, pending in this court, on judgments rendered or executions thereon, shall be made in writing, and filed with the clerk at or before the time of making the same.

RULE 8. That the clerk shall make all process in admiralty returnable on the first Monday of each and every month: provided, that if there be less than fourteen days between the test of the process, and the first Monday of the next month, the process shall be returnable to the first Monday of the succeeding month.

Entry.

WEDNESDAY, *April* 16, 1861.

Court met pursuant to adjournment. Present: Same as on 8th inst.

It is ordered by the court that the following rule be, and the
48 same is hereby, adopted as a rule of this court, to wit:

RULE 9. In common law causes, mesne process may be returnable at any time not less than three, nor more than thirty days after the time of issuing thereof, at the option of the plaintiff, and shall command the marshal to notify the defendant that he has been sued by the plaintiff, (naming him,) in the district court of the United States, for this district, and that unless he answers by the——day of ——, naming the twentieth day after the return day thereof, the petition will be taken as true, and judgment rendered accordingly.

Entry.

THURSDAY, *May* 30, *A. D.* 1861.

Court met pursuant to adjournment. Present: Same as on the 8th ult.

It is ordered, that the following be, and it is hereby, adopted as a rule of this court, to wit:

RULE 10. All matters relating to the jurisdiction of this court or in abatement, must be pleaded according to the rules of the common law.

Entry.

At a term of the district court of the United States in and for the district of Kansas, begun and held at Topeka, in said district, on Monday, the 14th day of October, in the year of our Lord one thousand eight hundred and sixty-one, (A. D. 1861,) and of our independence the eighty-sixth.

The Hon. Archibald Williams, judge, John T. Morton, clerk,
49 James L. McDowell, marshal.

Entry.

FRIDAY, *November* 1, *A. D.* 1861.

Court met pursuant to adjournment. Present: Same as on the 14th ultimo.

It is ordered by the court that the following be, and the same are hereby, adopted as rules of this court, to wit:

RULE 11. General power is hereby vested in the clerk of this court to name commissioners to take testimony in chancery causes in like manner that the court or judge can now do by the 67th chancery rule.

RULE 12. That writs of execution and other final process, except their style, issued on judgments and decrees, hereafter rendered in this court, and the proceedings thereupon, shall be the same as are now used in the courts of the State of Kansas, unless otherwise ex-

pressly directed by the judgment or decree. Provided, that no notice of the time and place of the appraisement of property levied upon or ordered to be sold shall be required.

Entry.

At a term of the district court of the United States in and for the district of Kansas, begun and held at Topeka, in said district, on Monday, the 14th day of April, in the year of our Lord one thousand eight hundred and sixty-two, (A. D. 1862.)

Present: The Hon. Archibald Williams, judge, Robert Crozier, U. S. att'y, John T. Morton, clerk, James L. McDowell, marshal.

Entry.

50 WEDNESDAY, *May* 7, *A. D.* 1862.

Court met pursuant to adjournment. Present: Same as on the 14th ultimo.

It is ordered that the following be, and the same are hereby, adopted as rules of this court, to wit:

RULE 13. When application is made for a continuance for want of an absent witness or witnesses, if the adverse party will agree that the affidavit may be read as evidence, on the trial of the case, subject to all exceptions that could be taken to it, if it were the deposition of the witness or witnesses duly taken and certified, then the case shall not be continued for want of such witness or witnesses, but the affidavit shall be read on the trial as though it were the deposition of such witness or witnesses.

RULE 14. Civil causes upon the second call of the trial docket, will be disposed of for the term unless good cause is shown to the contrary, or agreement made by counsel at the time of the second call, and where there shall be no attorney to answer on the second call, the cause will be set down to the heel of the docket.

Pet. in Hunter v. Clark et al.

The plaintiff then offered in evidence petition and notes on which the judgments in marshal's deed mentioned, were rendered, to wit:

TERRITORY OF KANSAS, *First Dist. Court:*

Sitting in the county of Leavenworth, for the trial of causes arising under the constitution and laws of the United States.

EDMUND A. W. HUNTER, pl'ff,
v.
JEREMIAH CLARK, AMOS REES, and SAMUEL F. Few. } Petition.

51 The above-named pl'ff, a citizen and resident of the State of Massachusetts, complaining of the above-named def'ts, citizens and residents of the Territory of Kansas, says that he is the owner and holder of a promissory note of the said defendants, of which the following is a copy:

Dolls. 1,040. LEAVENWORTH CITY, *Nov.* 8, 1859.

One year after date, we or either of us, promise to pay to E. A. W. Hunter or order, one thousand and forty dollars, value received. Negotiable and payable without defalcation or discount, at banking house of Scott, Kerr & Co., with interest after maturity, at the rate of thirty per cent. per annum.

JEREMIAH CLARK.
AMOS REES.
SAM'L F. FEW.

That said note is wholly due and unpaid.

That on the 10th day of November, 1860, said note was duly protested for non-payment.

The pl'ff therefore demands a judgment against the said defendants for the sum of one thousand and forty dollars, with damages
52 for the non-payment thereof, and $2 25 costs of protest, with interest thereon from Nov. 8th, 1860, at 30 per cent. per annum and costs.

O. B. HOLMAN,
Att'y for Pl'ff.

Indorsed: First Dist. court, Leavenworth county, U. S. E. A. W. Hunter *v.* J. Clark, *et al.* Petition. Filed December 3d, A. D. 1860. J. R. Whitehead, clerk.

Note.

Dolls. 1,040. LEAVENWORTH CITY, *Nov. 8th*, 1859.

One year after date, we or either of us, promise to pay to E. A. W. Hunter or order, one thousand and forty dollars, value received. Negotiable and payable without defalcation or discount, at banking house of Scott, Kerr & Co., with interest after maturity, at the rate of thirty per cent. per annum.

JEREMIAH CLARK.
AMOS REES.
SAM'L F. FEW.

Protested for non-payment, Nov. 10, 1860.
VICTOR SOULCEY, *N. P.*

Pet. in Morris v. Clark et al.

UNITED STATES OF AMERICA, *The State of Kansas, ss:*

53 District court of the United States for the district of Kansas.

Petition.

NANCY MCA. MORRIS, pl'ff,
v.
JEREMIAH CLARK, AMOS REES, ROBERT C. Thompson, and Samuel F. Few, def'ts.

The pl'ff, Nancy McA. Morris, says that she is a citizen of the State of Ohio, and that the said defendants, Jeremiah , Amos

Rees, Robert C. Thompson, and Sam'l F. Few, are citizens and residents of the State of Kansas; that the said defendants, at the county of Leavenworth, State of Kansas, on the 13th day of April, A. D. 1860, executed to said pl'ff their promissory note of that date, and then and there delivered the same to the said pl'ff, and thereby promised to pay to said pl'ff, or her order, at the office of J. W. Morris, in the city of Leavenworth, State of Kansas, then the Territory of Kansas, in 6 months after said 13th day of April, A. D. 1860,
54 the sum of $1,000, with interest thereon from said 13th day of April, A. D. 1860, until paid, at the rate of twenty per cent. per annum. A copy of the note aforesaid *note* is hereto attached, marked A.

The pl'ff further says that on the day when said note became due and payable, the same was presented the said def'ts for payment at the office of J. W. Morris, in Leavenworth city, Kansas, and payment thereof demanded of them, which was refused; whereupon said note was duly and legally protested for non-payment; of all of which said def'ts had due and legal notice.

Plaintiff further says that the amount due on said note has not been paid by said def'ts, or either of them, nor by any person for them, or either of them, nor has any part thereof been paid; and that there is now due from said defendants to said pl'ff on said note the sum of $1,000, principal and interest thereon from April 13th, A. D. 1860, at the rate of 20 per cent. per annum, and $2 25 costs of protest, and $60 damages.

55 The plaintiff further says that she is the lawful holder and owner of said note.

Wherefore she asks judgment against the said defendants for the sum of $1,062 25 and interest on $1,000 from April 13th, A. D. 1860, at the rate of 20 per cent. per annum, and for costs of suit.

ROBERT CROZIER,
Att'y for Pl'ff.

Exhibit A, copy of note referred to in petition.

LEAVENWORTH CITY, K. T.
April 13th, A. D. 1860.

Six months after date we, or either of us, promise to pay to the order of Nancy McA. Morris, at the office of J. W. Morris, in Leavenworth city, the sum of one thousand dollars, with int. from date until paid at the rate of twenty per cent. per annum, value received.

(Signed) JEREMIAH CLARK.
AMOS REES.
R. C. THOMPSON.
SAM'L F. FEW.

56 Indorsed: Nancy McA. Morris *v.* Jeremiah Clark *et al.* In dist. ct. Kansas, U. S. Petition. Copy.

Filed April 23d, A. D. 1861.

JOHN T. MORTON, *Clerk.*

Note.

LEAVENWORTH CITY, K. T.,
April 13th, 1860.

Six months after date we, or either of us, promise to pay to the order of Nancy McA. Morris, at the office of J. W. Morris, in Leavenworth city, the sum of one thousand dollars, with interest from date until paid at the rate of twenty per cent. per annum, value received.

JEREMIAH CLARK.
AMOS REES.
R. C. THOMPSON.
SAM'L F. FEW.

It was admitted that said notes were made in Kansas at the
57 time they bear date, and that the makers thereof were then residents of Kansas, and that the marshal sold said lots without any appraisement thereof, and that the property in controversy is worth over two thousand dollars.

The judge then charged the jury as follows, to wit: "The deed of the United States marshal offered herein is void, and conferred no title on the defendant."

To which instruction so given, the defendant, by his counsel, in open court, and when the charge was given, excepted, and now prays that this his bill of exceptions in that behalf may be allowed and signed by the court, and that the court will certify that the foregoing was all the evidence and all the instructions given on said trial; which is done, this the 27th day of May, 1864.

[SEAL.] SAM'L F. MILLER, *Judge.*

58 Which said bill of exceptions was, and now is, indorsed, in words and figures following, that is to say:

U. S. circuit ct., dist. of Kansas. Clinton Cockrill *v.* Leonard T. Smith. Bill of exceptions.

Filed May 27th, A. D. 1864.

CLARK J. HANK, *Cl'k.*

59 THE UNITED STATES OF AMERICA, *District of Kansas, ss:*

I, A. S. Thomas, clerk of the circuit court of the United States of America in and for said district, do hereby certify the above and foregoing to be a true and correct copy and transcript of the record and proceedings in a cause heretofore pending and decided in the said court, wherein Clinton Cockrill was plaintiff and Leonard T. Smith is defendant, and that the bond herewith attached was filed in my office, as shown by the indorsement thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in the city of Topeka, in said district, this 13th day of September, A. D. 1866.

[SEAL.] A. S. THOMAS, *Clerk.*

Internal revenue stamp, 10 cents, cancelled.

Supreme Court of the United States.

LEONARD T. SMITH, PLAINTIFF IN ERROR,

vs.

CLINTON COCKRILL.

No. 128.

On behalf of the plaintiff in error, the following is submitted:

The defendant in error brought his action to recover the lands described in his petition, (see Record, p. 3,) averring that he is the owner thereof, his right to the possession, that he is unlawfully deprived thereof by the plaintiff, and that the land is worth $2,400. The plaintiff joined issue by his answer, (p. 5,) admitting his possession of the land, and denying every other averment. The case was first tried before the court, and judgment rendered for defendant in error, (p. 6,) and a new trial granted, (p. 7.) Second trial by a jury, and verdict for defendant in error, (p. 8,) and judgment upon the verdict. The evidence is in the bill of exception, p. 9 to 22.

The only question in the case is, which party owns the land. They each claim through Jeremiah Clark; and on the trial it was admitted that "Clark acquired the title in feel simple, absolute to the premises" in 1857, and was in the actual possession thereof during 1858.

The defendant in error recovered a judgment against said Clark, on the 4th day of April, 1862, for $7,628 33, in one of the district courts of the State of Kansas, and had the lands sold upon an execution issued upon the judgment. The sale took place on the 23d day of July, 1863. The defendant in error bought the land, and the sheriff made him a deed Sep-

tember 28, 1863. These facts appear in the deed, pp. 10, 11, 12, and 13. And the facts stated in the deed were admitted to be true, p. 14. After the sale by the sheriff, and before he made his deed, on the 22d day of September, 1863, the defendant in error took a deed from said Clark for the same lands, pp. 9 and 10, and both that and the sheriff's deed were recorded. It is supposed that the deed was taken from Clark for greater safety, to provide against any defect in the title that came through the sheriff.

As this evidence was not objected to on the trial, and as the judgment of the court was not taken upon its effect, perhaps it is not now questionable that the defendant produced a sufficient title to the property to maintain his action, unless defeated by the prior title of the plaintiff in error. And thus, the only question that arises is whether the claim of the plaintiff under his prior deed was valid.

The title of the plaintiff in error to the property, rests upon the validity of the sale thereof to him by the marshal of Kansas, and the deed which he made.

On the 29th day of May, 1861, one Edward A. W. Hunter, obtained a judgment against said Jeremiah Clark, and others, in the United States district court for the district of Kansas, for $1,277 16. And on the next day, in the same court, one Nancy McA. Morris, recovered a judgement against the same parties, for $1,278 25, and on the 13th June, and 2d July, 1861, executions were issued upon these judgments, which were levied by the marshal on the 5th July, 1861, upon the lands in dispute, and on the 8th August, 1861, the lands were sold in separate parcels by the marshal, and the plaintiff in error, became the purchaser, and the purchase money being paid the marshal made him a deed on the 20th August, 1861, pp. 14 and 15. The facts are recited in the deed, and on page 16, it is admitted "that all the statements in said deed are true."

On pages 19, 20, and 21, a portion of the records are set out, and it appears that the judgment in favor of Hunter was rendered upon a note bearing date, November 8, 1859, and the judgment in favor of McA. Morris, was upon a note

lated, April 13, 1860, and it was admitted, p. 22, "that said notes were made in Kansas, at the time they bear date, and that the makers thereof were then residents of Kansas, and that the marshal sold said lots without any appraisement thereof, and that the property in controversy is worth over two thousand dollars."

The court instructed the jury that "the deed of the United States Marshal, offered herein, is void, and conferred no title on the defendant," (the plaintiff in error,) p. 22, to which ruling of the court the plaintiff in error at the time excepted. p. 22.

We insist that the court erred in saying to the jury that the deed from the marshal to the plaintiff in error was void, and conferred no title, and in rendering a judgment over the evidence that supported the plaintiff's title.

Why did the court hold the marshal's sale and deed void? The instructions to the jury did not suggest the defect. The judgments against Clark and others, and in favor of Hunter & McA. Morris, were valid, for the court had jurisdiction, and the admission is that the recital in the deed of their rendition is true. The issue and levy of the executions were regular; the place of sale, the door of the court house, was that provided by law, and the notice was sufficient. The property sold was not appraised and sold under appraisement as was required by the laws of Kansas. Was that requisite?

The civil procedure act of Kansas, approved February 11, 1859, Compiled Laws of Kansas 198, sections 444, 445 and 446, requires the appraisement of property levied upon, and that it shall sell for two-thirds of the appraised value. That law was continued in force at the formation of the State government, by section four of the schedule in the State constitution, Same vol., 70. Authorities need not be cited to prove that that law, after it became the law of the State, did not control the execution of final process from the United States Court, by its own force and vigor. It is claimed that it was adopted by the court. Was the appraisement law so adopted? The first rules adopted by the court were on the 10th day of April, 1861, p. 16. The 2d rule, p. 17, provides that "the practice